

- (b) A civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed

These documents are attached to this Notice of Removal as ***Exhibit A***.

C. REMOVAL IS TIMELY

3. Plaintiffs, James Odom and Verlita Odom, Individually and as Next of Kin for Jaden Odom and Nicholas Odom, Minor Children ("Plaintiffs"), filed the present civil suit against Tyson in the County Court at Law of Panola County, Texas, on November 12, 2010. Tyson was served with Plaintiffs' Original Petition and Request for Disclosure ("the Petition") on November 16, 2010. In the Petition, Plaintiffs assert negligence-based causes of action and claims for personal injury damages against Tyson. The Petition did not assert the specific amount of damages being sought by Plaintiffs, but instead alleged that Plaintiffs are seeking damages which "exceed the minimal jurisdictional limits of this court."¹

4. Approximately two months prior to filing the present lawsuit, on September 10, 2010, Tyson received a demand letter from counsel for Plaintiffs. A true and correct copy of the demand letter is attached as Exhibit 1 to the "Declaration of Zachary T. Mayer" attached to this Notice of Removal as ***Exhibit B***. Contained within the demand letter, counsel for Plaintiffs identified the following amongst the damages being sought by Plaintiffs:

¹ See, "Plaintiffs' Original Petition and Request for Disclosure" at ¶ VI.

- (a) Past medical expenses of \$392,946.58;
- (b) Loss of income and earning capacity for James Odom of \$990,000; and
- (c) Loss of income and earning capacity for Verlita Odom of \$863,676.²

Additionally, Plaintiffs extended a settlement demand of \$9,850,000 in that demand letter.³

D. VENUE IS PROPER

5. The United States District Court for the Eastern District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the County Court at Law of Panola County, Texas, is located within the jurisdiction of the United States District Court for the Eastern District of Texas, Tyler Division.

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. As admitted in his Original Petition, Plaintiffs are "residents of Panola County, Texas."⁴

8. Tyson is a foreign corporation formed under the laws of Delaware. Tyson's primary place of business is Springdale, Washington County, Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Tyson is not a citizen of the State of Texas.

9. Because Plaintiffs are residents of the State of Texas and Tyson is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

² Ex. "B" at Exhibit 1.

³ *Id.*

⁴ *See*, "Plaintiffs' Original Petition and Request for Disclosure" at ¶ I.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. In their Original Petition, Plaintiffs allege that they are seeking to recover at least thirty (30) different categories of damages, as set forth in full above. Based upon the demand letter provided to Tyson by counsel for Plaintiffs, Tyson believes that Plaintiffs are seeking no less than \$9,850,000 in damages from Tyson.⁵

11. In light of these facts, the current state court action may be removed to this Court by Tyson in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Eastern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Tyson is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the County Court at Law of Panola County, Texas, in which this action was originally commenced.

H. CONCLUSION

13. Defendant, Tyson Foods, Inc., hereby removes the above-captioned action from the County Court at Law of Panola County, Texas, and requests that further proceedings be conducted in the United States District Court for the Eastern District of Texas, Tyler Division, as provided by law.

⁵ Ex. B at Exhibit 1

Respectfully submitted,

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By: s/ Zach T. Mayer
Zach T. Mayer
State Bar No. 24013118
Brian J. Fisher
State Bar No. 24032178

**ATTORNEYS FOR DEFENDANT
TYSON FOODS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2010, a true and correct copy of the foregoing has been forward to all counsel of record, as follows.

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Stephen C. Mahaffey
Mahaffey & Mahaffey, P.C.
124 West Sabine Street
Carthage, Texas 75633

s/ Zach T. Mayer
Zach T. Mayer